



07-42
Louis W. Blessing, Jr.
State Representative, 29th House District

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November 12, 2007

Mr. Kevin Martin
Chairman, Federal Communications Commission
445 12th Street SW:
Room: 8-B201
Washington, DC 20554

FILED/ACCEPTED

JAN 15 2008

Federal Communications Commission
Office of the Secretary

Cable Antidiscrimination and Dispute Resolution

Dear Chairman Martin:

It is my understanding that the Federal Communications Commission has opened a rule-making proceedings case (MB Docket 07-42) to investigate the issue of channel carriage between cable operators and independent channel programmers.

I write to urge you to fully and seriously investigate the practices of the cable industry in regards to channel carriage and I believe you will find a systematic program of discrimination on the part of cable operators to neglect the carriage of independent channel programming in order to favor programming owned by the cable operators.

Here in Ohio, I, along with 20 other concerned legislators, have taken the proactive step of offering legislation to protect the rights of cable viewers. H.B 377 creates a dispute resolution mechanism, in the form of "baseball style" arbitration in which a neutral third party would choose between competing proposals for carriage, in those narrow examples where a cable operator has obvious self-interest to discriminate against a competing cable channel.

I do not believe the government should often interfere in the business arena. In this instance, however, the market power of the cable companies is of concern. In addition, these same cable companies who are now asking the FCC and the State of Ohio not to interfere in contracts, are the very same folks who asked the Ohio legislature to cancel all local franchise contracts by legislative fiat some six months ago.

Attached you will find several documents that I hope will help your committee in investigating this issue. Among these are a copy of my bill, the press release surrounding this bill, and several examples of the media coverage that has occurred.

Capitol:
77 South High Street
Columbus, Ohio 43215-6111
(614) 466-9091
(614) 719-3583 (fax)
(800) 282-0253 (toll free)

Committees:
Judiciary - Chairman
Criminal Justice, Public Utilities, Ways & Means

www.house.state.oh.us
District29@ohr.state.oh.us

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District:
Hamilton County

In order to protect cable consumers, it is becoming increasingly clear that government must take a more active and responsible role in regulating the actions of the cable industry. Please consider changing the FCC rules to facilitate appointment of an arbitrator in disputes between cable operators and independent channel programmers so they can be resolved more quickly (preferably through negotiation between the parties) and with consumers' interests foremost in mind.

Thank you for reviewing these matters.

Sincerely,



Representative Lou Blessing
Ohio House District 29
77 S. High St, 13th Floor
Columbus, OH 43215
614-466-9091

Co-Sponsors:

Representative Ross McGregor
Representative Thomas Patton
Representative George Distel
Representative David Daniels
Representative James Aslanides
Representative Danny Bulp
Representative Larry Flowers
Representative John Schlichter
Representative Joseph Uecker
Representative John White

Representative Michelle G. Schneider
Representative Bob Gibbs
Representative Mike Foley
Representative Matt Lundy
Representative Robert Hagan
Representative Robert Ottermen
Representative Edna Brown
Representative Linda Bolon
Representative Kenny Yuko
Representative Steve Driehaus

Cc: Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell

Committees:
Judiciary - Chairman
Criminal Justice, Public Utilities, Ways & Means

As Introduced

127th General Assembly
Regular Session
2007-2008

H. B. No. 377

Representative Blessing

Cosponsors: Representatives McGregor, R., Patton, Distel, Mecklenborg,
Daniels, Aslanides, Bubb, Flowers, Schlichter, Uecker, White, Schneider,
Gibbs, Foley, Lundy, Hagan, R., Otterman, Brown, Bolon, Yuko, Driehaus

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A B I L L

To enact section 1332.36 of the Revised Code to 1
require cable operators to participate in 2
arbitration regarding disputes with providers of 3
competing video programming. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 1332.36 of the Revised Code be 5
enacted to read as follows: 6

Sec. 1332.36. (A) As used in this section: 7

"Affiliated video programming" means video programming owned 8
in whole or in part by a cable operator. 9

"Basic cable service" and "video programming" have the same 10
meanings as in the "Cable Communications Policy Act of 1984," Pub. 11
L. No. 98-549, 98 Stat. 2780, 2781, 47 U.S.C. 522, as amended by 12
the "Telecommunications Act of 1996," Pub. L. No. 104-104, 110 13
Stat. 56. 14

"Cable operator" means a video service provider granted a 15
video service authorization under sections 1332.21 to 1332.34 of 16
the Revised Code or a person described in division (B) (1) (b) of 17

section 1332.23 of the Revised Code. "Cable operator" includes any 18
affiliate or subsidiary of a cable operator or multichannel video 19
programming distributor. 20

"Provider of competing video programming" means a person 21
engaged in the production, creation, or wholesale distribution of 22
video programming that is not affiliated with a cable operator and 23
that offers video programming that competes in the same 24
programming category as video programming owned by a cable 25
operator. 26

"Extended basic cable service" means a category of cable 27
service provided by a cable operator that is immediately superior 28
in terms of price and the number of available channels to the 29
basic cable service offered by the cable operator. 30

"Programming category" means video programming that 31
predominantly contains one of the following types of information: 32
sports, news and public affairs, entertainment, or any other 33
category provided for in rules adopted by the director of commerce 34
under this section. 35

(B) A cable operator that offers affiliated video programming 36
on its extended basic cable service shall treat in a fair, 37
reasonable, and nondiscriminatory manner the provider of competing 38
video programming that competes in the same programming category 39
with the cable operator's affiliated video programming. 40

(C) If the provider of competing video programming has reason 41
to believe it has not been treated in a fair, reasonable, and 42
nondiscriminatory manner by a cable operator concerning carriage 43
of the provider's competing video programming by the cable 44
operator, it may submit a request for commercial arbitration with 45
the cable operator not later than ninety days after an initial 46
request made by the provider or renewal of an agreement between 47
the cable operator and provider leads to a dispute. 48

(D) If the dispute remains unresolved ten days after
submission of the request for arbitration under division (C) of
this section, either party may file with the department of
commerce a formal demand for arbitration. The formal demand shall
be made in a form and manner prescribed by the department in rules
adopted under division (G) of this section. The formal demand
shall include a final offer. Once a formal demand for arbitration
is made, the department shall notify the other party of the demand
for arbitration. The responding party shall submit its final offer
not later than five days after receipt of notice from the
department.

(E) The arbitration shall be conducted by a single arbitrator
designated by the director of commerce under the expedited
procedures for arbitration rules adopted by the director under
division (G) of this section. The arbitrator shall examine the
final offer and response provided under division (D) of this
section and shall make an award in favor of the party whose offer
most closely approximates the fair market value of the programming
carriage rights at issue. The arbitrator shall use the terms and
conditions and form of the contract of the initiating party.

To determine fair market value, the arbitrator may consider
any relevant evidence and may require the parties to submit, under
confidentiality safeguards imposed by the arbitrator, any relevant
evidence within their control, including the following:

(1) Current or previous contracts between the provider of
competing video programming and other cable operators in which the
cable operator does or does not have an interest, including offers
made during negotiation of such contracts;

(2) Current or previous contracts for the carriage of the
cable operator's affiliated video programming by the cable
operator and other cable operators, including related and

integrated carriage or other arrangements for the affiliated video programming; 81
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(3) Price, terms, conditions, and relationships that the provider of competing video programming has regarding carriage with other cable operators; 83
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(4) Evidence of the relative value, including ratings or advertising rates, of the competing video programming compared to the affiliated video programming being carried by the cable operator; 86
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(5) The extent of national carriage of the competing video programming; 90
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(6) Whether the cable operator's affiliated video programming and the competing video programming have, in the past five years, pursued the same programming content from third parties. 92
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The arbitrator may not consider offers made prior to the arbitration made between the cable operator or the provider of competing video programming. 95
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(F) The award made in an arbitration under division (E) of this section shall be made in writing and signed by the arbitrator within ninety days after the initiation of the formal arbitration. A copy of the award shall be delivered to each of the parties. 98
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A copy of the award and any penalty assessment made under this division shall be filed with the court of common pleas designated by the parties, or, if no such designation has been made, in the court of common pleas of any county in which a party in interest resides or may be summoned, or if any party in interest is a corporation, in any county in which such corporation is situated, or has or had its principal office or place of business, or in which such corporation has an office or agent, or in any county in which a summons may be served upon the president, 102
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chairperson or president of the board of directors or trustees, or 112
other chief officer. 113

The court with which the copy of the award and penalty 114
assessment is filed is authorized to enforce the award and 115
assessment in the same manner it would enforce an award under 116
sections 2711.08 to 2711.16 of the Revised Code. 117

If the arbitrator finds that one party's conduct during the 118
course of the arbitration has been unreasonable, the arbitrator 119
may assess all or a portion of the other party's costs and 120
expenses, including attorney's fees, against the offending party. 121

(G) The director shall adopt rules in accordance with Chapter 122
119. of the Revised Code doing all of the following: 123

(1) Establishing the form and manner of a formal demand for 124
arbitration; 125

(2) Establishing rules of arbitration, in particular, the 126
rules for an expedited arbitration process; 127

(3) Establishing any additional programming categories to 128
those provided in division (A) of this section; 129

(4) Any other rules necessary to implement this section. 130

Ohio House of Representatives



Representative Louis W. Blessing, Jr.
Ohio House District 29

For Immediate Release:

November 1, 2007

For Further Information, contact:

Representative Blessing at (614) 466-9091

Legislators Stand Up For Cable Consumers

File Legislation to Arbitrate Disputes Between Cable Companies and Sports Networks like Big Ten Network and NFL Network

Columbus – Representative Lou Blessing (R-Colerain) announced today he has sponsored legislation that protects Ohio consumers from losing out on television programming options because of disputes between cable operators and programmers. 21 other State Representatives joined Rep. Blessing as cosponsors.

Entitled the “**Cable Antidiscrimination and Dispute Resolution Act of 2007**” (House Bill 377), the bill implements a mandatory dispute resolution mechanism in the form of a third-party in situations where cable operators and programmers can’t negotiate an agreement over programming.

Because many cable companies also own a share in the programming that they offer (Time Warner owns CourtTV and Turner Movie Classics among many others), he believes this gives them an incentive to stonewall other, independent programmers. “When cable operators like Time Warner refuse to consider offering expanded programming because they are more worried about protecting their bottom line than serving Ohio customers, I’m deeply troubled. Our bill ensures that cable operators and programmers understand that their number one concern should be the Ohio consumer,” said the Representative.

There has been some special criticism for Ohio cable operators that have refused to offer either the Big Ten Network or the NFL Network on their basic packaging.

“I’ve gotten numerous calls asking me to investigate why much of Ohio isn’t able to see some of the most popular sporting events. The Cincinnati Bengals, Cleveland Browns, and Ohio State Buckeyes are well followed teams and I’d like to think that everyone is in favor of getting Ohioans the sports programming they deserve,” said Blessing.

“With the start of games on the NFL Network in only three weeks and the recent decision by the Big Ten Conference to place Saturday’s Ohio State-Wisconsin game on the Big Ten Network, there is no time like the present to encourage cable operators and programmers to work together for the benefit of Ohio cable viewers,” added Blessing.

Representative Blessing encourages fellow legislators and cable customers to join him in supporting this bill.

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Legislators trying to end cable dispute

*Friday, November 2, 2007 3:43 AM
By JIM SIEGEL
Columbus Dispatch*

Wisconsin and Ohio State fans may not share many pleasantries this week, but many of them share a common frustration -- the inability to watch Saturday's football game at home.

Bipartisan groups of legislators in both states are hoping die-hard fans don't suffer the same pain when the teams meet again in 2008.

Ohio Rep. Louis Blessing, R-Cincinnati, joined by 21 co-sponsors, introduced a bill yesterday that would require a state-appointed arbitrator to settle disputes when cable providers and programmers can't reach an agreement -- such as in the ongoing battle between Time Warner Cable and the Big Ten Network.

The proposal is similar to a bill introduced this week by a bipartisan group of legislators in Wisconsin, where fans are feeling the same frustration about not being able to watch Saturday's matchup, the fourth Ohio State game this year broadcast exclusively on the Big Ten Network.

Because Time Warner has not reached an agreement to carry the network, more than 40 percent of the homes in the Columbus television market, as defined by Nielsen Media Research, will not get the game. In Wisconsin, Badger fans who subscribe to Time Warner or Charter Communications -- the state's largest providers -- also are out of luck.

Blessing said he's tired of hearing from frustrated television viewers who can't see their favorite Ohio sports teams because of the disputes -- including one over a lack of NFL Network availability.

"When cable operators like Time Warner refuse to consider offering expanded programming because they are more worried about protecting their bottom line than serving Ohio customers, I'm deeply troubled," Blessing said in a statement.

Including Blessing, 14 Republicans -- who belong to the party that controls the Ohio House -- signed on to support the bill. However, House Speaker Jon Husted, R-Kettering, likely needs a lot of convincing.

"He's generally opposed to interfering in private contracts between businesses," spokeswoman Karen Tabor said.

Heavy-hitting business interests already are lining up against the bill.

"It's a real reach by government into the private contracting process," said Linda Woggon, a lobbyist for the Ohio Chamber of Commerce.

Judy Barbao, a Time Warner spokeswoman, agreed, saying the marketplace, not government, should be deciding what programs are offered.

The cable industry says the NFL Network is behind the legislation here and in Wisconsin.

"Honestly, there hasn't been a great deal of interest in the (NFL Network) here," Barbao said, noting that the NFL Network is carrying no Browns games and only one Bengals game this year. "They are trying to use the government, rather than customer demand, to get their channel on lineups."

Seth Palansky, spokesman for the NFL Network, said the bill is vital to stopping a giant media company such as Time Warner from putting business interests before its customers'.

He said an arbitrator could rule in favor of Time Warner, so the bill guarantees nothing for the NFL Network.

"What is the harm?" Palansky said. "Is there anyone who should be opposed to protecting consumers?"

Under the bill, if a network programmer thinks it is not being treated fairly by a cable operator, it can request a state-appointed arbitrator to settle the matter.

The Big Ten Network declined to get mixed up in the debate yesterday. A spokeswoman said more time is needed to study the proposal.

The network reportedly is asking for \$1 per month per subscriber in the Big Ten's eight states, and Time Warner says that the network belongs on a pricier digital tier of sports channels. The network insists that it be on expanded-basic service, which includes channels such as ESPN.

jsiegel@dispatch.com

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The annual playoff cable flap

State rep steps in; Says there ought to be a law against shutting out sports viewers

BY JON CRAIG AND JOHN KIESEWETTER | JCRAIG@ENQUIRER.COM AND JKIESWETTER@ENQUIRER.COM

COLUMBUS - As football fans brace for less access to televised NFL and Ohio State Buckeye games, a Cincinnati-area lawmaker is calling for a timeout - including legal arbitration and penalties - in broadcast disputes between cable companies and TV sports networks.

State Rep. Louis Blessing, R-Colerain, introduced legislation Thursday that he says will protect Ohioans from losing out on television viewing options due to clashes between cable operators and programmers.

Blessing said he has received numerous calls asking him to investigate why TV audiences can't get access to some sporting events.

"With ... games on the NFL Network in only three weeks ... and the recent decision ... to place Saturday's Ohio State-Wisconsin game on the Big Ten Network, there is no time like the present to encourage cable operators and programmers to work together for the benefit of Ohio cable viewers," Blessing said.

A Bengals spokesman said his football team supports the bill. But a spokeswoman for Time Warner Cable cried foul over government intervention into private business negotiations.

Karen Baxter, public affairs director for Time Warner's southwestern Ohio division, said, "There is no proper basis to compel businesses to enter into agreements at all or on terms they don't accept voluntarily."

Time Warner, which serves about 640,000 customers in Southwest Ohio, is at an impasse in talks with the Big Ten Network, which has exclusive rights to televise Saturday's OSU-Wisconsin football game.

The BTN, which could charge Ohio cable operators as much as \$1.30 a month per subscriber to carry its content, wants to be shown on expanded basic cable. The BTN charges cable companies in non-Big Ten states an average of 30 cents per month. Kentucky customers pay 10 cents a month.

Time Warner and Comcast have declined to fold the BTN's Ohio fee into their basic cable rate and say they don't want to pass that extra cost onto Ohio customers who aren't interested in BTN content.

Instead, the cable operators want to put the BTN on a premium-priced sports tier.

Titled the "Cable Anti-Discrimination and Dispute Resolution Act of 2007," House Bill 377 calls for a third party to help mediate any dispute when cable operators and programmers can't reach an agreement. It also can be applied to disagreements over news, public affairs, entertainment and other cable programs.

Blessing's bill proposes that arbitration agreements get filed with a Common Pleas Court and can result in monetary penalties if one side's conduct is unreasonable. The legislation also sets a specific timetable for settling cable programming disputes.

The NFL Network's 24-hour football programming is also unavailable on cable, and Bengals spokesman Bob

Bedinghaus said the majority of Bengal fans living outside the Greater Cincinnati area probably will miss out on the NFL Network's broadcast of the Bengals-San Francisco 49ers game Dec. 15.

"Obviously we are supportive of the legislation," Bedinghaus said Thursday.

For the second year, WLWT-TV will simulcast the Bengals' NFL Network game, said Richard Dyer, Channel 5 president and general manager.



But Time Warner customers elsewhere in Ohio might not see it, Dyer said.

Insight Communications, the major cable operator throughout Northern Kentucky, provides both the BTN and the NFL Network.

DirectTV, DISH Network, Wide Open West and about 150 other cable companies have added the BTN to their expanded basic level of service without a price increase to consumers.

HOUSE BILL 377

House Bill 377 can be found on the internet at: http://www.legislature.state.oh.us/bills.cfm?ID=127_HB_377

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